



Michigan Supreme Court

State Court Administrative Office
Michigan Hall of Justice
P.O. Box 30048
Lansing, Michigan 48909
Phone (517) 373-4835

Chad C. Schmucker
State Court Administrator

MEMORANDUM

DATE: February 28, 2013

TO: Circuit, District, and Probate Judges
cc: Circuit and District Court Administrators
Probate Registers
County Clerks

FROM: Chad C. Schmucker
State Court Administrator

RE: Sealing Records Pursuant to MCR 8.119(I)

A recent [article](#) in the *Detroit Free Press* questioning the sealing of a court record on a civil case has prompted this reminder of the requirements of judges and court clerks pursuant to [MCR 8.119\(I\)](#). The following are key points to remember:

- A party must file a written motion identifying the specific interest to be protected. Courts are not authorized to seal records *sua sponte*.
- The court must make a finding of good cause in writing or on the record, which specifies the grounds for the order granting or denying the motion.
- The court must provide any interested person the opportunity to be heard concerning the sealing of the records.
- Materials that are subject to a motion to seal are required to be held under seal until the court disposes of the motion.
- Motions to seal a record should be forwarded to the assigned judge as soon as possible for review and determination.
- Court orders or opinions cannot be sealed, even if the entire file is ordered sealed.
- When the court grants a motion to seal a court record, in whole or in part, the court must forward a copy of the order to:

Clerk of the Supreme Court
P.O. Box 30052
Lansing, MI 48909

Marcia McBrien, Public Information Officer
State Court Administrative Office
P.O. Box 30048
Lansing, MI 48909

The court's SCAO Regional Administrator

As the rule makes clear, court records "shall" be open to the public absent good cause. The court rule sets a high bar for sealing records for good reason: the public expects, rightly, that their courts will operate openly. By following the requirements of MCR 8.119(I), courts will help preserve the public's confidence in its justice system.

Judges are encouraged to discuss the court rule with their clerks to assure the timely processing of all motions to seal court records, and to ensure compliance with the provisions on MCR 8.119(I).

Closing Sessions of Court Pursuant to MCR 8.116(D)

If a judge orders the closing of a session of court to the public, the following procedure outlined in [MCR 8.116\(D\)](#) must be followed:

(D) Access to Court Proceedings.

(1) Except as otherwise provided by statute or court rule, a court may not limit access by the public to a court proceeding unless

(a) a party has filed a written motion that identifies the specific interest to be protected, or the court *sua sponte* has identified a specific interest to be protected, and the court determines that the interest outweighs the right of access;

(b) the denial of access is narrowly tailored to accommodate the interest to be protected, and there is no less restrictive means to adequately and effectively protect the interest; and

(c) the court states on the record the specific reasons for the decision to limit access to the proceeding.

(2) Any person may file a motion to set aside an order that limits access to a court proceeding under this rule, or an objection to entry of such an order. MCR 2.119 governs the proceedings on such a motion or objection. If the court denies the motion or objection, the moving or objecting person may file an application for leave to appeal in the same manner as a party to the action.

(3) Whenever the court enters an order limiting access to a proceeding that otherwise would be public, the court must forward a copy of the order to the State Court Administrative Office.

Please feel free to direct any questions regarding either of these rules to your SCAO Regional Administrator.